

1 A. I think so.

2 Q. I'd like a copy of that. I don't
3 remember seeing it before. It could well have
4 been in the documents you supplied us, I just
5 don't remember seeing it.

6 MR. HAWA: I owe you something else as
7 well, right?

8 MR. SHOOK: You well may, but I can't
9 even begin to imagine what it is right now. It
10 will probably be a lot easier for us to remember
11 once the transcripts come back.

12 BY MR. SHOOK:

13 Q. The next document I'm going to place
14 in front of you -- actually, there are two
15 documents I'm going to place in front of you.
16 One is called "The Section 63.71 Application" and
17 the other is a request for waiver.

18 With respect to this Section 63.71
19 Application, did you have any role whatsoever in
20 preparing that document?

21 A. I had some input, yes.

1 Q. Did you draft the document?

2 A. No, I didn't.

3 Q. Did Lisa draft the document?

4 A. Yes, she did.

5 Q. Lisa, meaning Lisa Green?

6 A. Yes.

7 Q. But at some point, you reviewed the
8 document?

9 A. Yes.

10 Q. Did you edit the document?

11 A. No, I didn't.

12 Q. Did anyone other than Lisa and
13 yourself look at the document before it was sent
14 to the FCC?

15 A. I don't recall. I don't think so. I
16 never provided it to anyone else, not that I know
17 of.

18 Q. If you did not provide it to anyone
19 else, is that because you viewed it as a matter
20 that didn't warrant anybody else's attention?

21 A. That's pretty much -- we were -- once

1 our mini program was developed, it was given to
2 me. And that's what I worked off of.

3 Q. In other words, from the November 19
4 letter that we had looked at previously, you and
5 Kurtis or Kurtis developed an action plan to deal
6 with the matter. The matter was given to you and
7 you ran with it?

8 A. Yes.

9 Q. So there wasn't any need for you to go
10 back to Kurtis with this particular document?

11 A. In hindsight, I should have. However,
12 at the time, I didn't think that.

13 Q. And what is it about hindsight that is
14 telling you that you should have given him the
15 63.71 application to look at?

16 A. When we were notified that it was
17 lacking and they weren't satisfied with it.

18 Q. And "they," meaning people at the FCC?

19 A. Vermont and FCC, yes.

20 Q. Vermont as well?

21 A. Uh-huh.

1 Q. With respect to the request for
2 waiver, did Lisa draft that document?

3 A. I believe she did, yes.

4 Q. Did you review the document?

5 A. Yes, I did.

6 Q. And do you recall whether or not you
7 brought that document to anybody else's
8 attention?

9 A. No.

10 Q. In other words, you didn't bring it to
11 anybody else's attention?

12 A. No. I notified -- not this document,
13 but I notified Kurtis of the reason we had to do
14 this document. But not this particular waiver.

15 Q. And what did you tell Kurtis?

16 A. That they didn't like -- they were
17 dissatisfied with the way he disconnected the
18 customers. And they didn't like the letter that
19 was sent to the customers.

20 Q. So once you received notification from
21 the FCC and the State of Vermont that there was

1 some problem on their end with what you had done,
2 you brought that matter to Kurtis's attention?

3 A. Yes.

4 Q. What, if anything, did he say to you
5 about that?

6 A. I don't remember him saying too much
7 about it because basically, the way I presented
8 it to him, I told him that they weren't
9 satisfied, you know, with the process. And this
10 is how we were going to handle it. And I think
11 he just said okay.

12 Q. And what did you tell him in terms of
13 how you were going to handle it?

14 A. That we were going to request a waiver
15 to -- for those requirements to send the letter.
16 And I let him know that, you know, the reason why
17 it was lacking and that was it.

18 Q. The letter that I'm going to show you
19 now is -- bears a date of January 3, 2003, it's
20 from the State of Vermont Department of Public
21 Service. It's addressed to Marlene H. Dorge

1 (phonetic), secretary of the Federal
2 Communications Commission. It includes a number
3 of attachments. The letter itself is three pages
4 in length and it's signed by Sarah Hoffman. And
5 as cc's, your name is listed. I'd like you to
6 just take a look through this letter.

7 (Witness Reviewing Document.)

8 Q. Do you recall receiving a copy of that
9 letter?

10 A. Yes.

11 Q. Did it include the attachments that
12 appear with the copy that I have given you?

13 A. I believe it did.

14 Q. And those attachments include what, if
15 you could describe them briefly.

16 A. The introduction and background for
17 this order, finding the facts.

18 Q. The order came from whom?

19 A. The Vermont Public Service Board.

20 Q. And was there -- are there any other
21 attachments?

1 A. Final stipulation and the
2 Discontinuance of Service Letter.

3 Q. When you received the January 3 letter
4 from Sarah Hoffman, did you read through it?

5 A. Yes.

6 Q. Do you recall whether or not you
7 brought it to anybody's attention?

8 A. Yes. I notified Kurtis.

9 Q. Did you give him a copy of the letter?

10 A. I'm not sure if I gave him a copy. I
11 may have taken the one that was given to me.

12 Q. Taken the one that was given to you
13 and simply shown him that you had received this
14 letter?

15 A. I think I may have put it in his box
16 for him to read.

17 Q. Do you recall discussing the contents
18 of the letter with him in any way?

19 A. No. Not all of it, no.

20 Q. I'd like to go through a number of
21 points in the letter. This appears on page two.

1 If you could read to yourself point one.

2 (Witness Reviewing Document.)

3 Q. At the time you received this
4 letter -- and I take it, it was roughly close to
5 January 3, 2003 -- did you understand from point
6 one that what the State of Vermont was arguing
7 was that Business Options Inc. had not told the
8 entire truth with respect to material in the
9 63.71 application?

10 A. Yes.

11 Q. Did you understand that that was a
12 very serious charge?

13 A. No. Not at the time. I took it for
14 what it said. That it was judgment credibility.

15 Q. Did you feel the need to respond to
16 that charge?

17 A. I believe we did respond to it. I
18 believe at some point, I think -- I can't
19 remember exactly when the response was done. But
20 I think I did respond to it, I think.

21 Q. When you think of response, did you

1 respond to Sarah Hoffman or did you respond to
2 the FCC or both?

3 A. I think it was from Sarah. There was
4 another letter that was sent to me. And I
5 believe that she was outlining that she had a
6 problem with some of the things that were in
7 here. And she said that possibly that it could
8 be -- she could understand better if I explained
9 why we did that.

10 Q. What I want to show you is a letter
11 dated January 8, 2003. It's on the letter head
12 of Business Options Inc. It's addressed to Sarah
13 Hoffman. It's a three-page letter. Apparently,
14 this was faxed to her according to the notations
15 at the top of the page.

16 A. Un-huh.

17 Q. First, if you could turn to page
18 three, is that your signature?

19 A. Yes.

20 Q. Did you draft this letter?

21 A. Yes, I did.

1 Q. Did anybody review the letter before
2 it went out?

3 A. No.

4 Q. Is this the letter this you're
5 thinking of in terms of responding to Sarah
6 Hoffman?

7 A. Yes.

8 Q. The letter says it's in response to a
9 December 31 letter from Sarah Hoffman, which I
10 don't have at my finger tips, as opposed to the
11 January letter that we were looking at that had
12 been addressed to the FCC.

13 MR. HAWA: I have it.

14 Q. Your counsel is placing in front of
15 you a December 31 letter.

16 A. Yes.

17 Q. That's addressed to you?

18 A. Yes.

19 Q. It's from the State of Vermont?

20 A. Yes.

21 Q. Does that letter -- does the State of

1 Vermont letter include the argument that the
2 63.71 application was stretching credibility?

3 A. Which one?

4 Q. The December 31 letter from the State
5 of Vermont.

6 A. Yes.

7 Q. And could you point out in the January
8 letter to Sarah Hoffman where, if at all, you
9 responded to that argument.

10 A. In number seven.

11 Q. What is it that was said?

12 A. What was said?

13 Q. Yes.

14 A. This is a business decision strictly
15 in terms of our being able to finalize a
16 stipulation and focus our energies in other areas
17 of our business.

18 Q. The next charge that was included in
19 the January 3 letter from Sarah Hoffman to the
20 FCC. In point two, if you could read that to
21 yourself, please.

1 (Witness Reviewing Document.)

2 Q. Did you send anything to the FCC in
3 response to the charge made in point two?

4 A. I don't think so.

5 Q. I may not have asked this question
6 with respect to the charge that was made in point
7 one. The charge that was made in point one,
8 we've talked about a letter that was ultimately
9 sent to the State of Vermont. Do you recall
10 whether there was any response sent to the FCC in
11 terms of the charge that was made in point one of
12 the January 3, 2003 letter?

13 A. From Business Options?

14 Q. Correct.

15 A. I don't recall. I remember the
16 requirement of what we sent to Vermont needed to
17 go to the FCC, I remember that part.

18 Q. With respect to the charge made in
19 point two, that charge roughly is that Business
20 Options was not being fully truthful in claiming
21 that it didn't know what the requirements of

1 section 63.71 were.

2 I take it that your position on that
3 would be, "Well, we didn't know because we
4 didn't." Would it be fair to say -- and you're
5 nodding yes?

6 A. Yes.

7 Q. I take it that it would be fair to say
8 that your reason for saying you didn't know was,
9 that at the time, you had not looked it up?

10 A. That's correct. And I guess the best
11 way to explain it is that we did not look it up
12 in the beginning and we did not follow -- because
13 we didn't look it up, we didn't follow exactly
14 what needed to be done the way it was set out in
15 the regulations. And we relied on the
16 information that was provided for us here as far
17 as what needed to be done. And we relied on
18 other people telling us what needed to be done
19 instead of us looking it up for ourselves.

20 Q. In terms of relying on what other
21 people told you, you're referring to the

1 conversations that occurred with FCC employees?

2 A. Yes and Vermont.

3 Q. And Vermont?

4 A. Yes.

5 Q. Again, I think the only person who's
6 been mentioned with respect to Vermont is Sarah
7 Hoffman?

8 A. I believe, yes.

9 Q. Was there anybody else that you had
10 conversations with?

11 A. I think I spoke with Marlene Dorge at
12 one time, but I don't remember speaking to anyone
13 else. With Vermont, Sarah Hoffman.

14 Q. Something that I overlooked previously
15 when we were looking at the request for waiver
16 that had been sent to the FCC at the same time as
17 the section 63.71 application. And that is: Do
18 you have any recollection as to who suggested to
19 BOI that it prepare such a waiver?

20 A. Either John Adams or John Mincoff. He
21 called -- specifically, Lisa called to find out

1 what we could do to repair this. And that's when
2 we were -- it was told to us that we could try
3 for the waiver and how to put it together.

4 Q. When you say "repair this," could you
5 amplify what is it that you're thinking of?

6 A. When they didn't accept what we sent
7 them and we realized that they were pretty upset
8 about it. Of course, we wanted to repair
9 whatever damage we created so we --

10 Q. I understood from looking at the two
11 documents, and I'm not sure if you've got copies
12 of them right in front of you or if I took them
13 back. I understood that the request for the
14 waiver and the section 63.71 application were
15 sent simultaneously. You see that both of them
16 bear the date of December 20, 2002?

17 A. Uh-huh. Yes.

18 Q. Does that help in any way in terms of
19 jogging your memory as to how it is that the
20 request for waiver came to be sent? Because I
21 believe your testimony suggests that the 63.71

1 application was actually submitted, that there
2 was then some discussion with --

3 A. We were notified from Vermont that it
4 wasn't acceptable. I was called. And this was
5 before we had gotten to the process of sending
6 you a copy of what we sent Vermont. And when
7 Vermont told us that they were dissatisfied with
8 it and that they were going to notify the FCC
9 concerning, you know, their dissatisfaction about
10 it, we called the FCC to try to find out how we
11 could fix it. And then that's when they told us
12 about the waiver. And so when we had to send a
13 copy of the application to you, we submitted the
14 waiver along with it.

15 Q. So in other words --

16 MR. HAWA: It's clear that we're
17 getting confused to what was in response. What
18 we might want to do in a little chronology, what
19 was submitted, what was the communication with
20 Vermont, what they were dissatisfied with, what
21 you did in response to that. And let's work our

1 way through December here.

2 MR. SHOOK: Right. That's what I was
3 going to try to find out was what had actually
4 been sent to Vermont. Because apparently some
5 other document or some communication had occurred
6 with Vermont independent of --

7 MR. HAWA: The disconnection notices
8 that went out.

9 BY MR. SHOOK:

10 Q. So if you could perhaps tell us what
11 it was that was actually sent to the State of
12 Vermont or what came to the State of Vermont's
13 attention that lead to the preparation of the
14 request for waiver.

15 A. Vermont asked us to give them some --
16 to give them a copy of whatever we sent to the
17 customer, I think. Or they wanted a regular
18 update. And so they were always sending us
19 documents and calling me and asking -- even in
20 the letter, I was trying to combine a lot of the
21 information that she was, you know, asking me for

1 as much as possible so we could stay on track
2 with the time line. But once we realized that
3 when she notified us that she wasn't satisfied
4 with it, then that's when we contacted the FCC to
5 find out what we could do. And that's how -- the
6 requirement was that we send the FCC a copy of
7 our Discontinuance Notice. And we were told to
8 submit the application -- the waiver along with
9 it.

10 Q. So there was a letter or something
11 that had been sent to the State of Vermont prior
12 to December 20th that ultimately triggered the
13 request for waiver?

14 A. Yes.

15 MR. HAWA: I'm not sure we're quite
16 there.

17 MR. SHOOK: No. But I think without
18 the actual document -- without actually seeing
19 whatever it was that was sent to State of
20 Vermont, we're probably going to have a little
21 hole here.

1 MR. HAWA: I think what she's saying
2 is, she sent a copy of the Discontinuance Letter
3 that went to customers to Vermont.

4 MR. SHOOK: That's what I understood
5 her to have said. Unless we could actually see
6 the transmittal that went to Vermont along with
7 whatever it was that was sent with that
8 transmittal, we're probably going to be a little
9 fuzzy here.

10 MR. HAWA: Maybe we'll do a
11 five-minute break.

12 MR. SHOOK: Okay. Why don't we take a
13 break.

14 (A short break was taken.)

15 BY MR. SHOOK:

16 Q. I recognize that some of our dialogue
17 may be a little bit confusing when we look at
18 this later on because there are times when we
19 perhaps don't refer to the State of Vermont or
20 the FCC or particular individuals, so I'll try to
21 keep that in mind when I'm speaking with you.

1 And if you could also, please, pursuant to your
2 counsel's sage advice, to do the same.

3 A. Uh-huh.

4 Q. I want to go back to January 3 letter
5 that Sarah Hoffman sent to the FCC. And at this
6 time, I'd like you to read to yourself point
7 three.

8 A.

9 (Witness Reviewing Document.)

10 Q. With respect to the allegation that
11 appears in point three, do you have any
12 recollection of sending any writing to the FCC
13 responding to that charge?

14 A. No.

15 Q. With respect to point four of Sarah
16 Hoffman's January 3, 2003 letter to the FCC --
17 first of all, please read it to yourself.

18 (Witness Reviewing Document.)

19 A. I don't remember.

20 Q. Do you have any recollection of
21 sending any response to the FCC with respect to

1 the charge that appears in point four of Sarah
2 Hoffman's letter?

3 A. I remember a response -- several
4 responses that I sent to the FCC, but I'm not
5 quite certain what they actually contain right
6 now.

7 Q. I'll show you eventually some material
8 that was sent to the FCC. All I can tell you is
9 that I don't remember seeing anything from
10 Business Options that addresses point four. And
11 I was just wondering if perhaps you remembered
12 something.

13 A. No.

14 Q. If you would please look at the
15 paragraph that reads "The inaccuracies in BOI's
16 application are intentional and grossly
17 misleading. Because of the inaccuracies in BOI's
18 application, the department recommends that the
19 filing be rejected by the FCC. And sanctions be
20 applied as our just and equitable." Did you send
21 any writing to the FCC arguing that Sarah

1 Hoffman's argument that appears in this January 3
2 letter was wrong?

3 A. No, we didn't.

4 Q. Do you recall bringing to Kurtis's
5 attention that Sarah Hoffman was claiming to the
6 FCC that Business Options had sent an inaccurate
7 and grossly misleading document?

8 A. Yes.

9 Q. You did. And what did Kurtis say
10 about that?

11 A. That's when we discussed -- that's
12 when I brought it to Kurtis's attention and
13 explained to him what we were going to do about
14 it. And the response was, we were going to
15 request a waiver.

16 Q. That may be a little bit difficult to
17 factor in here because you'll notice that the
18 letter from Sarah is dated January 3 -- the
19 letter from Sarah is dated January 3, 2003, it's
20 sent to the FCC.

21 A. Yes.

1 Q. The request for waiver was sent
2 December 20th?

3 A. Yes.

4 Q. What I'm asking is, whether there was
5 anything sent subsequent to January 3, 2003 to
6 respond to or otherwise argue with the arguments
7 that Sarah Hoffman made to the FCC?

8 A. I know I talked to her on the
9 telephone one morning. That, I remember. And I
10 was explaining to her basically what we had
11 responded to, why we didn't believe that it was
12 grossly misleading.

13 MR. HAWA: May I propose a question?

14 MR. SHOOK: Sure.

15 MR. HAWA: Did Sarah Hoffman contact
16 you by telephone raising substantially similar
17 concerns as are drafted in this January 3rd
18 letter between the submission of your
19 Discontinuance Application -- Discontinuance
20 Notices to customers, but prior to your filing of
21 the discontinuance -- I'm getting confused.

1 MR. SHOOK: The focal point of my
2 questioning here is whether you sent anything to
3 the FCC after January 3, 2003, that said, "Hey,
4 the State of Vermont is wrong."

5 THE WITNESS: The only thing that I
6 remember is speaking with her and she explained
7 to me over the telephone what the problem was.
8 And requesting an update of our activities. And
9 I provided her with that information. And I
10 explained why, which is in, I think, this letter.

11 BY MR. SHOOK:

12 Q. "This letter," meaning what?

13 A. January 8, 2003 letter.

14 Q. That you sent to the State of Vermont?

15 A. Right. And I think that it explains
16 what happened.

17 Q. So you sent an explanation to the
18 State of Vermont, but you don't remember whether
19 or not you sent an explanation to the FCC?

20 A. No. There was no explanation that I
21 remember ever going to the FCC. All of our

1 correspondence was directly with Vermont. And
2 the only thing that from at the that time that we
3 understood was that we needed to send you a copy
4 of our Application for Discontinuance.

5 Q. Which you had done on December 20,
6 2002?

7 A. Yes.

8 Q. Just to tell you where I'm coming
9 from, I didn't want to find out later on that
10 there was a letter that had actually been sent by
11 Business Options subsequent to January 3, 2003
12 that set forth whatever explanation you had, for
13 defense, you had for the charges that Sarah
14 Hoffman had made in that January 3, 2003 letter.

15 A. I honestly don't recall. I just
16 recall mailing in a letter. I recall talking to
17 her on the telephone and submitting this letter.

18 Q. "This letter," meaning the January 8
19 letter to the State of Vermont?

20 A. Yes, sorry.

21 Q. Given what you know today, would you